

Definitive Subdivision Approval – 11-01
Beacon Court
February 1, 2011



Planning Board

TOWN OF ACTON
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DECISION

11-01

Beacon Court

Definitive Subdivision (*Residential Compound*)
February 1, 2011

APPROVED with CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Centennial Homes LLC (hereinafter the Applicant) for property in Acton, Massachusetts, located at 57 Robbins Street and shown on the Acton Town Atlas map H-2 as parcel 7-2 (hereinafter the Site). The owners James and Theresa Stellar reside at the same address.

The Application is for Approval of a Definitive Subdivision Plan entitled "Beacon Court", received by the Acton Planning Department on October 5, 2010, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

The public hearing ran for two sessions: November 16, 2010 and January 4, 2011. The Board, without hearing further evidence, agreed to a hearing continuation on December 21, 2010. Mr. Scott Hayes P.E. of Foresite Engineering, Mr. Michael Katin of the law firm Scheier & Katin, and Messrs. Glen Kaufmann and Paul Gaboury of Centennial Homes represented the Applicant at the

hearing. Board members Ryan Bettez (Chairman), Jeff Clymer (Vice Chair), Roland Bourdon, Kim Montella, Ray Yacouby and Associates Derrick Chin were present throughout the hearing. The Chairman appointed Mr. Chin to sit on the Board as a full member for purposes of this matter. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 A plan entitled "Beacon Court" dated 9/20/10, and last revised on 12/3/10 drawn by Foresite Engineering and consisting of 6 sheets.
- 1.2 Supplemental items and documentation required by the Rules consisting of:
 - A properly executed Application for Approval of a Definitive Plan, form DP, dated 9/27/10.
 - Filing fee.
 - A completed Development Impact Report, form DIR.
 - Aerial Photograph.
 - Designer's Certificate.
 - Certified abutters list.
 - A list of requested waivers, last revised on 01/04/11.
 - A letter authorizing Town entry into the Site to complete the street.
 - An authorizing vote of trust, corporation or company.
 - Copy of the deed.
 - A list of mortgage holders.
 - A draft restrictive covenant.
 - Stormwater report and calculations.
- 1.3 Additional information submitted by the Applicant:
 - Letter from Foresite, dated 12/17/10, re: Revisions to Proposed "Beacon Court" (...).
- 1.4 Interdepartmental communication received from:
 - Acton Building Commissioner, dated 10/18/10.
 - Acton Engineering Department, dated 11/12/10 and 01/03/11.
 - Acton Fire Chief, dated 11/10/10 and 01/03/11.
 - Acton Health Department, dated 10/15/10 (Justin Snair) and 01/04/11 (Doug Halley).
 - Acton Historic District Commission, dated 11/12/10.
 - Acton Natural Resources Director (Tom Tidman), dated 10/29/10 and 01/04/11.
 - Acton Planning Director, dated 11/08/10 and 01/04/11.
 - Acton Treasurer's Office, dated 10/18/10 and 10/21/10.
 - Acton Tree Warden & Municipal Properties Director, dated 10/25/10.
 - Acton Water Supply District, dated 11/08/10.
- 1.5 Correspondence received from:
 - Michelle and John Kilpatrick, dated 09/10/10, 09/17/10, 11/16/10 and 01/04/11.
 - Mariko Chang, dated 09/17/10.
- 1.6 Other:
 - Letter from the Mass. Division of Fisheries and Wildlife, dated 04/30/10, re: NHESP File No. 09-27190 - determination of no Take of State listed rare species.

- Letter from the Mass. Division of Fisheries and Wildlife, dated 12/01/10, re: NHESP File No. 09-27190 – Confirmatory and amended no Take determination.
- Letter from the Acton Historical Commission to Ms. Teresa Stellar, dated 9/13/10.
- Public hearing continuation requests and agreements, dated 11/16/10, 12/15/10, and 12/22/10.
- Disclosure of Appearance of Conflict of Interest per G.L. Ch. 268A §23(b)(3) by Derrick Chin.

Exhibits 1.1 through 1.3 are referred to herein as the Plan.

2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The proposed subdivision is located within the Residence 2 (R-2) zoning district; and it is located in Zone 4 of the Groundwater Protection District, except for a small northeastern portion of the Site that is located in Zone 3, where no construction activity is proposed. The Site is not a Local Historic District.
- 2.2 There is a wetland in the northeastern portion of the Site that is associated with a habitat for a State listed rare species. No construction is proposed in that area. The Mass. Division of Fisheries and Wildlife has issued a determination of no Take subject to a conservation easement on the area and review and approval of the final plan. The proposed conservation easement line is shown on the Plan.
- 2.3 The Plan shows the proposed division of the approximately 2.03 acre Site into 3 residential lots and a 180-foot long subdivision street (measured to the throat of the turnaround), proposed Beacon Court, which intersects with Robbins Street.
- 2.4 The proposed uses, two single-family dwellings plus one existing dwelling to be retained, are allowed on the Site in accordance with the Acton Zoning Bylaw (hereinafter the Bylaw), including all overlay district requirements. The proposed lots comply with the area and frontage requirements of the Bylaw, including all overlay district requirements.
- 2.5 The Plan shows limits of clearing on lots. They are shown for illustrative purposes only. Actual limits of clearing may vary.
- 2.6 The Plan shows typical house and driveway locations on lots. They are shown for illustrative purposes only. Actual driveway locations may vary, except for specific requirements of this Decision. House locations may shift within the parameters of setbacks required under the Bylaw.
- 2.7 The design of the proposed subdivision street is intended for approval under Section 10 of the Rules - Optional Residential Compound, which implies waivers from the Rules. The subdivision is eligible for consideration as a Residential Compound. The Applicant has demonstrated with a "proof plan" that he could build a subdivision street under the otherwise applicable requirements of the Rules. A Residential Compound is less intrusive to the neighborhood, preserves more of the natural environment of the Site, and helps preserve the present character of the neighborhood, including the existing house on proposed Lot 1, which is listed on Acton's cultural resource list under Chapter N of the Town of Acton Bylaws. The Plan, as modified herein, accomplishes these purposes of the Rules' Residential Compounds option. However, the proposed Residential Compound plan would require the demolition of a small barn. The Acton Historical Commission has issued

- a 12-month demolition delay on the barn pursuant to Chapter N, subject to further review after the conclusion of other jurisdictional proceedings.
- 2.8 Ways in Residential Compound subdivisions can be built to lesser design and construction standards than other streets in Acton. They are intended to remain private ways. This requires a legal framework for the maintenance and ownership of the private ways. Furthermore, the Board needs assurances that the Town will not be asked to plow, maintain, or accept the private way in the future.
- 2.9 The Board solicited comments from various Town departments and has received such comments, which are listed in Exhibit 1.4 above. The Board also received comments from the Historic District Commission and from abutters. The Board considered these comments in its deliberations and made them available to the Applicant. They are restated herein as required plan modifications or conditions as deemed appropriate by the Board.
- 2.10 Under Massachusetts Law property taxes on the land must be paid prior to recording of a definitive plan.
- 2.11 Chapter J of the Bylaws of the Town of Acton, which regulates the disposition of public shade trees and stone walls, identifies Robbins Street as a Scenic Road. However, it appears that none of the proposed work would require the removal or alteration of public shade trees or stone walls.
- 2.12 The Applicant has requested certain waivers from the Rules. These are discussed in section '3.1 Waivers' below.
- 2.13 In lieu of constructing sidewalk as required by the Rules, the applicant has offered a donation to the Town's sidewalk fund. The Planning Department has calculated the fair contribution based on the otherwise required lengths of sidewalk to be constructed as follows: (154 feet subdivision frontage on Robbins Street X \$50) + (180 feet in new subdivision street X \$20) = \$7,700.00 + \$3,600.00 = \$11,300.

3 BOARD ACTION

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted on February 1, 2011 by a vote of in favor, opposed, abstained, to APPROVE the definitive subdivision.

3.1 WAIVERS

- 3.1.1 Waivers from the Rules are granted, including those specifically requested, to allow the recording and construction of the subdivision as shown on the Plan and as further modified in this Decision.

3.2 PLAN MODIFICATIONS

The Plan shall be revised prior to its endorsement to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Board or its designee. Where approvals are required from persons or agencies other than the Board, the Applicant shall be responsible for providing evidence of such approvals to the Board or its designee.

- 3.2.1 All Plan sheets submitted for endorsement shall have the requisite professional designer stamps (P.E., R.L.S. and R.L.A.).
- 3.2.2 Modify the turnaround at the end of Beacon Court to fully accommodate a 3-point turn of a SU-30 truck unit with all wheels on pavement pursuant to turning templates kept in the

Acton Engineering Department. In making the modifications, continue to attempt to preserve the three existing 12", 20", and 24" trees in the turnaround area.

- 3.2.3 Verify with the Fire Chief that no hydrant is necessary in the proposed street turn-around area. If a hydrant is required, show its location and re-specify the water service lines as may be required.
- 3.2.4 For trees in the turnaround that are to be preserved, specify on the plan, with a detail or otherwise, protection devices for their critical root zones.
- 3.2.5 On Plan sheet 4 (Site Development Plan & Road Profile) show a temporary construction fence along the Kilpatrick property line between the Sutherland property and the proposed conservation easement line. The fence shall be reasonably solid to deter accidental trespassing; red tape on stakes is insufficient.
- 3.2.6 In lieu of the standard public shade tree plantings required by the Rules, show trees and other landscaping elements strategically place to help screen the proposed dwellings on lots 2 and 3 when viewed from Robbins Street. The planting plan shall include adequate contingency replacements for any trees lost during construction that are labeled on the plan as "to be preserved if possible". The planting plan shall be approved by the Acton Tree Warden.
- 3.2.7 Submit a private way maintenance agreement and covenant, enforceable by the Town of Acton, that (1) assigns the responsibility for snow and ice removal and for general maintenance to the owners of the subdivision lots 1-3; and declares and covenants that (2) Beacon Court shall remain a private way; (3) Beacon Court shall not serve more than three single family homes; (4) the owners of lots 1 through 3 in Beacon Court shall be jointly responsible for the removal of snow and ice in Beacon Court; (5) the owners of lots 1 through 3 in Beacon Court shall be jointly responsible for any general maintenance and upkeep of Beacon Court and any associated and built-in drainage structures and other utilities; (6) the owners of lots 1 through 3 in Beacon Court shall not petition the Town to accept Beacon Court as a public way; and (7) that the owners of lots 1 through 3 in Beacon Court shall not petition the Town to provide snow and ice removal services or any other maintenance of Beacon Court.
- 3.2.8 The aforesaid private way maintenance agreement and covenant shall also include the Stormwater Operation & Maintenance Plan as presented in the application as Appendix F of the Stormwater Report and Calculations.
- 3.2.9 The aforesaid private way maintenance agreement and covenant shall also contain a paragraph that requires that any sum pumps that may need to be installed to dewater foundations or basements on lots 2 or 3, shall discharge towards the lot line between lots 2 and 3.
- 3.2.10 The Plan shall be modified to address any remaining concerns raised by the Acton Water Supply District (AWD) and AWD approval of the Plan shall be submitted in writing prior to Plan endorsement (see AWD 11/8/10 comment letter).
- 3.2.11 All fire hydrants, if any, shall be installed in accordance with the specifications of the Acton Fire Department (AFD) and AFD approval of the Plan shall be submitted in writing prior to Plan endorsement.
- 3.2.12 Add a Plan note stating that houses and driveways are shown for illustrative purposes only and that driveway locations and house locations may vary from what is shown on the Plan.

- 3.2.13 Add a Plan note stating that any limits of clearing shown on the Plan are not required under the subdivision approval. If such limits of clearing are required by another entity having jurisdiction the note shall clarify that fact.
- 3.2.14 Unless directed otherwise by this decision, the definitive plan shall be modified to comply with all requirements of the Rules, and shall address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

3.3 CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. Failure to adhere to the following conditions shall be reason to rescind this subdivision approval pursuant to MGL Ch.41, S.81-W. The Town of Acton may elect to enforce compliance with this decision using any and all powers available to it under the law.

- 3.3.1 In lieu of granting the waivers above from the Rules, which include a waiver from the requirement that a sidewalk must be built in the proposed subdivision street and along the frontage of the subdivision Site, the Applicant shall, prior to Plan endorsement, submit a contribution to the Town's sidewalk fund in the amount of \$11,300.00.
- 3.3.2 Beacon Court shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 1 through 3 file a petition with the Town to accept it as a public way.
- 3.3.3 Beacon Court in its entirety shall be maintained by the owners of lots 1 through 3 in accordance with the private way maintenance agreement. This shall include the removal of snow and ice. The Applicant and the owners of lots 1 through 3 in Beacon Court shall not petition the Town to provide snow and ice removal services in Beacon Court or to provide any other maintenance and upkeep of Beacon Court.
- 3.3.4 Beacon Court shall not serve more than three residential lots.
- 3.3.5 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Board may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.3.6 As required under Massachusetts General Laws, Ch. 60, S. 23, the Plan approved hereunder shall not be recorded with the Middlesex South District Registry of Deeds or the Land Court unless it is accompanied by a municipal lien certificate, indicating that all taxes, assessments, and charges then assessed against the land shown on the Plan have been paid in full. If not paid at the time of endorsement of the Plan, the Board will add a Plan note to remind the Registry of Deeds or the Land Court of this legal requirement.
- 3.3.7 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.8 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.9 All work on the Site shall be conducted in accordance with the Rules, except as waived, and the terms of this approval, and shall conform with and be limited to the improvements shown on the endorsed Plan.
- 3.3.10 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District (see AWD 11/8/10 comment letter).

- 3.3.11 Upon completion of all work as shown on the Plan, and before the final release of any performance guarantee, the Applicant shall submit an as-built plan in accordance with Section 10.1.4 of the Rules.
- 3.3.12 This Decision, the endorsed Record Plan, the private way maintenance agreement and covenant, and the Restrictive Covenant if any, shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

3.4 LIMITATIONS

The authority granted to the Applicant under this approval is limited as follows:

- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Rules and other applicable laws and regulations.
- 3.4.2 This subdivision approval applies only to the Site identified in this decision and to the activity as shown on the Plan.
- 3.4.3 Other approvals or permits required by law and other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.4 This subdivision approval shall expire if not endorsed on the Plan within one year from the date that this decision has been filed with the Town Clerk. It shall also expire, if street construction and installation of services is not completed within 8 years from the date that this decision has been filed with the Town Clerk. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to this decision and to require any appropriate modifications of the Plan.
- 3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 41, § 81-BB and shall be filed within 20 days after the date of filing this Decision with the Town Clerk.

5 CERTIFICATE OF ACTION

This document stating the Decision of the Board shall serve as the Certificate of the Board's Action to be filed with the Town Clerk pursuant to MGL, Ch. 41, § 81-U.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Planning Director
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Taylor, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Owner

Building Commissioner
Engineering Administrator
Conservation Administrator
Police Chief
Historical Commission

Health Director
Municipal Properties Director
Town Manager
Acton Water District
Assistant Assessor

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